



No. of 2013.

FAMILY PROTECTION BILL 2013

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Draft of 19/04/2013

A BILL

for

An Act

entitled

Family Protection Bill 2013,

Being an Act to-

- (a) provide for an offence of domestic violence; and
- (b) establish a regime for family protection orders in cases of domestic violence; and
- (c) preserve and promote harmonious family relationships; and
- (d) prevent and deter domestic violence at all levels of society in the country, and

for related purposes.

MADE by the National Parliament to come into operation upon certification by the Speaker.

PART I. -PRELIMINARY.

I. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution* namely-

- (a) the right to liberty of the person conferred by Section 42; and
- (b) the right to the freedom of expression and publication conferred by Section 46; and
- (c) the right to peaceful assembly and associate and to form or belong to, or not to belong to, political parties, industrial organizations or other associations conferred by Section 47; and
- (d) the right to freedom of choice of employment in any calling for which person has the qualification (if any) lawfully required conferred by Section 48; and
- (e) the right to reasonable privacy in respect of his or her private and family life, his or her communications with other person and his or her personal papers and effects conferred by Section 49; and
- (f) the right to vote and stand for public office conferred by Section 50; and
- (g) the right to reasonable access of official documents conferred by Section 51; and

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(h) the right of freedom of movement conferred by Section 52, is a law that is made for the purposes of complying with Section 38 of the *Constitution*, taking account the National Goals and Directive Principles on integral human development and equality and participation called for in the Preamble to the *Constitution*, and for the purpose of giving effect to the public interest in public welfare, and to the protection of families as the core of the society and to promote harmonious family relationships.

2. INTERPRETATION.

In this Act, unless the contrary intention appears -

“child” means an individual under the age of 18 who is-

- (a) a biological, adopted, step or foster child of the person; or
- (b) in the care or custody of the person;

“communication” means written, oral, sign or electronic forms of communication;

“complainant” means the alleged victim of domestic violence;

“court”, unless otherwise indicated, means the District Court;

“defendant” means a person against whom a family protection order is sought under this Act;

“domestic violence” has the meaning given by Section 5;

“domestic violence offence” means an offence under Section 6;

“family member” means each of the following:

- (a) the spouse of the person; or
- (b) a child of the person or a child of the person’s spouse; or
- (c) a parent of the person or a parent of the person’s spouse; or
- (d) a grandparent; or
- (e) a brother or sister of the person or a brother or sister of the person’s spouse; or
- (f) any other person who is treated by the spouses as a family member.

“family protection order” means a protection order or an interim protection order issued under Part III;

“interim protection order” means an order made under Section 12;

“Minister” means the Minister responsible for national justice administration;

“property of a person” means property that:

- (a) the person owns; or
- (b) the person does not own, but -
 - (i) is used and enjoyed by the person; or
 - (ii) is available for the person’s use or enjoyment; or
 - (iii) is in the person’s care or custody;

“protection order” means an order made under Section 16;

“spouse of a person” means an individual of the opposite sex to the person who:

- (a) is or has been married to the person; or
- (b) although not married to the person, is living with the person in a marriage-like relationship or has lived with the person in such a relationship; or
- (c) is a biological parent of a child with the person (whether or not they are or have been married or are living or have lived together); and

“well-being” includes adequate food, shelter and access to fresh water.

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3. OBJECTIVES OF THE ACT.

The objectives of this Act are -

- (a) to promote safe, stable and strong families; and
- (b) to prevent and deter domestic violence at all levels of society; and
- (c) to recognize that domestic violence of any kind is not an acceptable behaviour; and
- (d) to ensure that there is effective legal protection for the victims of domestic violence; and
- (e) to provide for the punishment of persons who commit acts of domestic violence or who breach family protection orders.

4. UNDERLYING PRINCIPLES.

To achieve the objectives of the Act, all persons exercising functions, powers and duties under the Act, will recognize and take into account the following underlying principles:

- (a) that freedom from violence is every person's right; and
- (b) that violence is often a learned behaviour which can be unlearned; and
- (c) that violence in marriage is not a private matter, but a social problem of public concern; and
- (d) that stopping domestic violence will strengthen marriages and improve family life; and
- (e) that stopping domestic violence will help create a more peaceful society; and
- (f) that it is the responsibility of every person to take a strong stand against domestic violence for the benefit of the whole society.

PART II. - DOMESTIC VIOLENCE OFFENCE.

5. MEANING OF DOMESTIC VIOLENCE.

(1) A person commits an act of domestic violence if he or she does any of the following acts against a family member:

- (a) assaults the family member (whether or not there is evidence of a physical injury); or
- (b) psychologically abuses, harasses or intimidates the family member; or
- (c) sexually abuses the family member; or
- (d) stalks the family member so as to cause him or her apprehension or fear; or
- (e) behaves in an indecent or offensive manner to the family member; or
- (f) damages or causes damage to the family member's property; or
- (g) threatens to do any of the acts in Paragraphs (a), (c) or (f).

(2) Without limiting Paragraph (1) (d), a person may stalk another person by -

- (a) following the person; or
- (b) watching the person; or
- (c) loitering outside the premises where the person lives, works or frequents for the purposes of any social or leisure activity; or
- (d) making persistent telephone calls, sending persistent text messages or other forms of communications to the person or to the premises where the person lives or works.

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- (3) For avoidance of doubt -
 - (a) a single act may amount to an act of domestic violence; and
 - (b) a number of acts that form part of a pattern of behaviour may amount to domestic violence even though some or all of those acts when viewed in isolation may appear to be minor or trivial.

6. DOMESTIC VIOLENCE OFFENCE.

- (1) A person who commits an act of domestic violence is guilty of an offence.

Penalty: A fine not exceeding K5, 000.00 or imprisonment for a term not exceeding two years or both.

- (2) It is not a defence to an offence under Subsection (1) that the defendant has paid an amount of money or given other valuable consideration, in accordance with his or her custom, to the complainant.

PART III. - FAMILY PROTECTION ORDERS.

Division 1. – Applications.

7. APPLICATION FOR A FAMILY PROTECTION ORDER.

- (1) An application for a family protection order may be made by:
 - (a) the complainant; or
 - (b) any person on behalf of the complainant if the complainant has given his or her written consent for that person to make the application; or
 - (c) a qualified legal practitioner on behalf of the complainant if the complainant has given his or her written consent for that practitioner to make the application; or
 - (d) a police officer on behalf of the complainant if the complainant has given his or her written consent for that officer to make the application.

- (2) Subject to Subsection (3), an application for a family protection order must be made in the prescribed form.

- (3) A failure to comply with Subsection (2) does not invalidate the application.

- (4) An application to a court for a family protection order may be made –
 - (a) orally; or
 - (b) in writing.

- (5) If the application is made orally, the court must reduce the application into writing as soon as practicable in the prescribed form.

Division 2. – Conditions.

8. CONDITIONS RELATING TO GOOD BEHAVIOR.

A court may include all or any of the following conditions in a protection order:

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- (a) the defendant must be of good behaviour towards the complainant or any other family member named in the order; or
- (b) the defendant must not commit acts of domestic violence.

9. CONDITIONS RELATING TO INDIVIDUAL PROTECTION.

A court may include all or any of the following conditions in a protection order:

- (a) prohibiting the defendant or complainant from approaching each other; or
- (b) prohibiting the defendant or complainant from communicating with each other; or
- (c) prohibiting the defendant or complainant from being in or near specified premises, including premises where the other lives, works or frequents, even though he or she has a legal or equitable interest in the premises; or
- (d) prohibiting the defendant or complainant from causing another person to engage in conduct referred to in Paragraphs (a) to (c).

10. CONDITIONS RELATING TO PROPERTY.

A court may include all or any of the following conditions in a protection order -

- (a) prohibiting the defendant from damaging the property of the complainant; or
- (b) directing the defendant -
 - (i) to return any specified personal property of the complainant; or
 - (ii) to allow the complainant to recover, have access to, or make use of, any specified personal property; or
- (c) granting the complainant exclusive occupancy to a residence or specified part of a residence whether or not the residence is solely owned or leased by the defendant; or
- (d) prohibiting the defendant or complainant from causing another person to engage in conduct referred to in Paragraph (a).

11. CONDITIONS RELATING TO COUNSELLING AND MEDIATION.

A court may direct either or both the defendant and the complainant to participate in -

- (a) counselling; or
- (b) mediation; or
- (c) both counselling and mediation.

Division 3 - Interim Protection Orders.

12. COURT MAY MAKE INTERIM PROTECTION ORDER.

- (1) In this division "court" includes the Village Court.
- (2) A court may make an interim protection order if the court believes on reasonable grounds that the complainant is in danger of any form of domestic violence.
- (3) The court may impose conditions in an interim protection order in the same way that it may impose conditions in a protection order issued under Division 2 of this Part.

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(4) A court may make an interim protection order whether or not the defendant or complainant is in court.

(5) In avoidance of doubt, a court may make an interim protection order even though an application was also made under Section 7 for a protection order.

(6) A court may include the name of a family member in an interim protection order made for the benefit of the complainant if the court believes on reasonable grounds that the family member is in danger of any form of domestic violence.

13. FORM OF AN INTERIM PROTECTION ORDER.

(1) Subject to Subsection (2), an interim protection order is to be made in the prescribed form.

(2) A failure to comply with Subsection (1) does not affect the validity of the interim protection order.

14. COMMENCEMENT AND DURATION OF INTERIM PROTECTION ORDERS.

(1) An interim protection order or a renewed interim protection order commences at the time it is served on the defendant.

(2) An interim protection order remains in force for not more than 30 days, and may be renewed only once for a further 30 days.

(3) An interim protection order remains in force for 30 days unless -

(a) it is revoked; or

(b) it is renewed; or

(c) it is replaced by a protection order.

15. EVIDENCE.

(1) A court may make an interim protection order on such evidence as the court considers sufficient and appropriate having regard to the interim nature of the order.

(2) Without limiting Subsection (1), if the complainant is unable to attend the court because of his or her injuries, the court may accept affidavit evidence on behalf of the complainant.

16. COURT MAY MAKE PROTECTION ORDER.

(1) Following an application made under Section 7, a court may make a protection order against a defendant if the court believes on reasonable grounds that -

(a) the defendant has committed an act of domestic violence against the complainant; or

(b) the defendant is likely to commit an act of domestic violence against the complainant.

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(2) In deciding whether to make a protection order, the court must take into account the following:

- (a) the need to ensure that the complainant is protected from domestic violence; and
- (b) the safety and well-being of the complainant; and
- (c) the safety and well-being of other family members; and
- (d) any other matter the court considers relevant.

(3) The court may include the name of a family member in a protection order made for the benefit of the complainant, if the court believes on reasonable grounds that the defendant has committed, or is likely to commit, an act of domestic violence against that family member.

17. ABSENT DEFENDANT.

(1) Subject to Subsection (2), a court may proceed to hear and determine an application for a protection order if the defendant is not present.

(2) The court must be satisfied on reasonable grounds that -

- (a) the defendant has been served with a summons to appear at the hearing; or
- (b) the defendant was required by conditions of bail to appear at the hearing; or
- (c) having regard to the circumstances of the case, all reasonable efforts have been made to give the defendant notice of the hearing.

18. FORM OF PROTECTION ORDER.

(1) Subject to Subsection (2), a protection order is to be made in the prescribed form.

(2) A failure to comply with Subsection (1) does not affect the validity of the protection order.

19. COMMENCEMENT AND DURATION OF PROTECTION ORDER.

(1) A protection order or an extension to an existing protection order commences at the time it is served on the defendant.

(2) A protection order continues in force for the period specified in the order, unless it is revoked or the period of the order is varied.

(3) The period specified in a protection order must not exceed two years and is to be for such period as the court considers necessary to protect a person.

(4) Where a period is not specified in an order, the order remains in force for six months.

Division 5. – Offence and Compensation.

20. OFFENCE TO BREACH FAMILY PROTECTION ORDER.

(1) A person who breaches a condition or conditions of a family protection order or an interim protection order is guilty of an offence.

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Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding three years or both.

(2) It is not a defence to an offence under Subsection (1) that the defendant has paid an amount of money or given other valuable consideration in accordance with his or her custom to the complainant.

(3) It is a defence to an offence under Subsection (1) that the defendant establishes a reasonable excuse.

21. COMPENSATION.

In addition to any order for protection, a court may order the defendant to pay compensation in accordance with custom or otherwise to the complainant if the complainant as a result of an act of domestic violence suffered -

- (a) personal injury; or
- (b) damage to property; or
- (c) financial loss.

PART IV. - MISCELLANEOUS.

22. POWER OF COURT TO MAKE ORDER ON OWN INITIATIVE.

- (1) A court may, on its own initiative, make a family protection order against a person if -
- (a) the person pleads guilty to, or is found guilty of, an offence under Section 6 or an offence under any other law that involves conduct that amounts to domestic violence; and
 - (b) the court is satisfied that the order could be made against the person under this Act.

(2) If a family protection order is already in force, the court may vary the order.

23. SPOUSE MAY GIVE EVIDENCE.

If a person is charged with an offence under this Act -

- (a) the person's spouse is a competent and compellable witness in any legal proceedings in connection with the offence; and
- (b) the person's spouse may be called to give evidence without the consent of the person.

24. VARIATION AND REVOCATION OF ORDERS.

(1) An application to vary or revoke a family protection order may be made by any person to whom the order applies.

(2) An application under Subsection (1) must be made to the court that made the order.

25. NO APPLICATION FEES.

Notwithstanding the provisions of any other law, policy, practice or procedure, no fees or charges are payable to a court in relation to the making of an application for a family protection order.

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26. REGULATIONS.

The Head of State, acting with, and in accordance with advice of the National Executive Council, may make regulations not inconsistent with this Act prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.